

Commission to Study the Comprehensive Shoreland Protection Act

Minutes of June 13, 2006 Meeting

Room 305, Legislative Office Building, Concord, NH

10:00 a.m. – 12:00 p.m.

Members Present

Interest Represented

House of Representatives

House of Representatives

NH DES

Regional Planning Commissions

NH Lakes Association

At large waterfront owner

At large waterfront owner

NH Farm Bureau Federation

NH Home Builders and Remodelers

UNH (estuary)

NH Association of Realtors

NH Municipal Association

NH Rivers Council

NH Timberland Owners

Landscaping Consultant

NH Conservation Commissions

NH Wildlife Federation

NH Waterworks Association

NH Natural Resource Scientists

Representative

Michael Whalley

David Currier

Rene Pelletier

Robert Snelling

William Smith, PhD.

Eric Herr

Michele Grennon

John McPhail

Joe Landers

Jeff Schloss

Tom Howard

Carol Granfield

Kathryn Nelson

Tom Hahn

George Pellettieri

Diane Hanley

James Kennedy

Stephen Del Deo

Cindy Balcius

Members Absent

Senate

Senate

Office of Energy and Planning

NH Marine Trades Association

NH Attorney General (designee)

Carl Johnson

John Gallus

Jennifer DeLong

Paul Goodwin

Jennifer Patterson

Others in Attendance

Staff

Staff

NH DES

House Staff

RYP

Pemigewasset River Local Advisory

Pemigewasset River Local Advisory

Sheehan Phinney Capital Group

Arlene Allen

Darlene Forst

Jody Connor

Joel Anderson

Jason Tanguay

Max Stamp

Fred Gunter

Henry Veilleux

10:10 Vice Chairman Smith opened the meeting.

Mr. Smith motioned for the acceptance of the May 8, 2006 meeting minutes, seconded by Ms. Nelson. Minutes were approved unanimously without correction.

Wetland Buffer Discussion

Mr. Smith recounted the formation of the Woodland Buffer Workgroup. The group had requested the guidance of the Commission at the May meeting and in a straw vote the Commission voted, by a 2:1 margin, in favor of pursuing a point system of maintaining minimum vegetation over establishing a no cut zone. The Group met on June 5, 2006, and developed a 2 tiered system. The system consists of a Riparian Zone in which there would be a woody plant inventory taken on 50 ft grid pattern. The 50 ft distance was selected to match the 50 ft setback, minimize the number of measurements necessary, and because a large number of lots have frontage in 50 ft increments. Landward of the Riparian Zone would be the Woodland Preservation Zone.

Within the Riparian Zone trees over 6" diameter would be worth 3 pts. Any other plant having a woody stem at 4 ½ feet above the ground would be worth 1 pt. There would need to be a minimum of 50 pts in a grid square before cutting could occur in that square. They had hoped that a 50 pt/50 ft method would be easily remembered. Cutting of vegetation under 3 ft in height would not be allowed.

Within the Woodland Preservation Zone there would be the same criteria but cutting of vegetation less than 3 ft in height would be allowed. The amount of vegetation required would be proportional to the amount of the grid square that was undeveloped.

Mr. Kennedy stated that he had tested the Maine system's 25 ft square and point system in various conditions and found that it allowed the removal of approximately 50 % of the vegetation that occurred in natural, undisturbed areas. If the Maine point system were adapted to a 50 ft grid square it would require 48 pts. The group rounded up to 50 points to make system requirements easy to remember. He further stated that the removal of shrubs and saplings have a 1" diameter stem would have a noticeable impact.

Mr. Smith stated that there were no changes to the definition of tree or shrub, but they had added a definition for "ground cover". He further stated that they would welcome input and encouraged people to test the system.

Mr. Hahn stated that they tested impacts of assigning points to the tree sizes as done in the Maine systems and decided go with an average point value which was determined to be 3 points for trees and 1 point for shrubs.

Mr. Landers asked if there was science behind the 50 pt value.

Mr. Smith stated that it was derived from the Maine criteria and field observations.

Minutes

Mr. Snelling stated that they had found the 50 point level retained approximately 50% of the vegetation, as was the current requirement, but provided a better method of measurement.

Mr. Landers asked if they tested areas and found less than 50 pts.

Mr. Snelling stated that areas along rivers and agricultural lands often didn't have the 50 points.

Mr. Landers asked if planting to meet the 50 pts would be required in those areas.

Mr. Kennedy stated that those areas could be considered grandfathered and planting would no be required though it could be encouraged. He stated that they had hoped the pint system would compliment a 10 % impervious surface limit.

Mr. Herr stated that the system seemed to require 17 trees per 250 sq ft area, or 5 trees per 50 sq ft area, or 1 tree per each 10 ft square. He was trying to visualize how this would look in practice and wondered if it would allow a view of the frontage from the home which could have some safety benefit such as providing the ability to watch children in the water.

Mr. Kennedy stated that the system was flexible enough to allow for some view cutting.

Mr. Schloss stated that some limbing was allowed and that this also helped to provide a view.

Mr. Smith stated that he received a professionally sponsored magazine in which a recent study noted that the average riparian buffer was 50 ft.

Rep. Currier asked how the work group would respond to the statement that the grid system was more complicated.

Mr. Kennedy stated that it was less complicated because it eliminated the 20 year time frame and removed the basal area calculations. All that a land owner needed to do was count stems.

Rep. Currier asked if the grid inventory was something that should be recorded or kept on file for reference for subsequent homeowners.

Mr. Snelling stated that the systems established a minimum amount of vegetation and therefore no inventory would be necessary.

Ms. Hanley stated that she believed the new method was much easier to explain and required less work.

Ms. Nelson stated that she had tested the method on her own property and found it to be much easier than the existing method.

Mr. Pellettieri stated that he felt the new system was an improvement but that problems would arise when people started to look for ways to subvert the process by cutting live trees first while leaving diseased or dead trees that would later be exempt, standing.

Mr. Hahn stated that they had tried to address the issue as best they could but some people will try to undermine the system no matter what system they choose. He stated that by eliminating

Minutes

the Healthy Well Distributed Stand definition and eliminating the Hazard Tree exemption he believed the issue could be addressed.

Mr. Schloss stated that education would still be a determining factor and that homeowners need to understand the cause and effect of actions such as tree removal. The state needs to find alternative reasons for homeowners to “do the right thing”.

Rep. Currier stated that he has been receiving similar comments regarding the need for education.

Mr. Snelling suggested the cutting trees could be considered a form of development and could require a permit thereby eliminating purposeful abuse.

Rep. Currier asked what the threshold was for needing to file an Intent to Cut with the Dept of Resources and Development.

Mr. Hahn stated that one could cut up to 10,000 board ft or 20 cord for personal use before an Intent to Cut was required. That equates to about 2 fully loaded logging trucks.

Ms. Nelson stated that she felt the new system would make it easier for members of the public to identify violations and cut down on the numbers of misguided complaints to the Department. She stated that she didn't agree with the argument that the ability to clear a viewshed to the water was a safety issue. She stated that she could see some value and reason in allowing some clearing for a view, but safety was not a factor.

Rep. Currier stated that he had heard a number of concerns and stories of silt accumulating in water bodies. He asked if the new system would help address this.

Ms. Balcius stated that much of the siltation is coming in from small tributaries that are not protected by the CSPA. Small buffers on these tributaries could help the problem.

Mr. Schloss agreed that the small unprotected streams were significant contributors of silt.

Mr. Kennedy stated that the new definition of ground cover, and the new protection of it, would help address this.

Ms. Hanley noted that in her observation all construction impacted water quality. What she would like to have clear is the landscaper or contractors responsibility relative to those impacts.

Ms. Granfield stated that when water quality issues had occurred on certain projects in Meredith their Code enforcement had initiated action and later had sought the involvement of DES.

Ms. Granfield stated that she understood the enforcement process but that it was not a deterrent and that Best Management Practices were not being followed. This was routinely resulting in water quality violations for which someone must be held accountable.

Ms. Balcius noted that some towns were adopting erosion certification requirements, but it is difficult to keep track of all projects, particularly single family home construction, all of the time. She further noted that the Alteration of Terrain and NPDES programs were not applicable on small projects less than an acre in size.

Ms. Nelson pointed out that the new Riparian zone restrictions might be a good “jumping off” point for new local ordinances and education efforts.

Mr. Herr asked if existing conditions would be grandfathered in the Riparian Zone.

Mr. Smith stated that grandfather was something to be considered but the issue needed more work.

Mr. Snelling stated that land owners would be allowed to maintain existing openings.

Mr. Herr stated that the grandfathering only applied in the first 150 ft.

Mr. Snelling apologized and stated that it was something they had tried make clear.

Rep. Currier asked what part of the Woodland Buffer proposal they were discussing.

Mr. Kennedy referred him to part B and stated that it should include a provision for grandfathering.

Mr. Landers stated that he thought that owners should be allowed to maintain open areas including lawns.

Mr. McPhail noted that he had often heard members of the Commission bash lawns as being detrimental to the environment. He disagreed and stated that lawns could be excellent nutrient filters. He cited a study conducted by Cornell University, details of which he had with him, that found lawns absorbed more nitrogen and phosphorus than natural areas. Mr. McPhail gave the information to Mr. Smith to review.

Mr. Schloss stated that he was familiar with the research and agreed with the statement that a lawn could be good but it was dependent upon it being a healthy lawn which incorporated grass species appropriate to the soil and site conditions. He stated that the problem with lawns tended to be that people used the wrong type of grass and that they want to see green. In addition, developers tend to put lawns over compacted soils. Improperly maintained lawns are not good filters.

Ms. Grennon stated that she had recently talked to three lawn service companies regarding fertilizing and treating lawns adjacent to public waters and that each had said those practices were ok.

Mr. Howard stated that it had been his understanding that the restriction on enlarging open areas would only be applied in the Riparian Zone.

Mr. Snelling stated that this was not his recollection of the discussion.

Mr. Howard reiterated that he believed that the enlarging of open areas would be allowed between 50 and 150 feet provided the 50 ft requirement was met.

Minutes

Rep. Currier requested and received confirmation that he was not talking about the Riparian Zone.

Ms. Nelson asked Mr. Howard to explain his concern.

Mr. Howard explained that he had believed that home owners would be allowed some flexibility between the riparian zone and the 150 ft line, the Woodland Protection Zone. He believed that they would be able to expand open areas as long as they still met the 50 pts per 50 ft square requirement.

Mr. Snelling agreed that it was something that was supposed to be allowed provided the pts were maintained.

Mr. Smith stated that having reviewed the information provided by Mr. McPhail, it appeared that lawn did not absorb phosphorus well which would be a serious concern since e phosphorus was the limiting nutrient in the environment. He then asked the Commission about the time table for revising and polishing the language relative to woodland buffers.

Rep. Currier stated that the legislative members would be responsible for draft language and that draft legislation was due in December. They would need to have the Commission's report and available information before then. He asked for additional comments including whether the members felt that the Commission was moving in the appropriate direction on the issue.

Mr. Snelling noted that there had been no comment from the DES representative.

Mr. Pelletier stated that DES' silence was a good sign. He stated that he agreed with earlier observation that dead or diseased trees should be removed first and should not be used to get around cutting restrictions and that some people will be determined to subvert the law. Under current requirements the Department does look at erosion on Alteration of Terrain projects larger than 50,000 sq ft, but that on small sites it was virtual impossible to track, monitor and catch violators. There simply is not the manpower to follow through. The department can require siltation and erosion controls but to successfully pursue enforcement staff must observe and document the water quality violation and it is not possible to be every to catch violators in the act.

Rep. Currier noted that he had arrived late and confirmed that the meeting minutes for May had already been approved.

Mr. Snelling asked what the next step was and how would the Commission close an item to take it off the table.

Rep. Currier stated that it would be by vote of the Commission.

Mr. Landers stated that he had heard any objections to the proposal but that he had heard some concerns and asked if the Woodland Buffer Work Group could revisit the proposal before the next meeting to address those concerns. He asked the work group members if the grid squares could be moved to maximize cutting.

Mr. Snelling stated that the grid was fixed and was centered on the house or the property center if there was no house.

Mr. Howard stated that he did not think the grid should be centered on the house.

Mr. Schloss asked what to do if the house was not centered on the property.

Mr. Pellettieri stated that he felt the grid could be manipulated.

Mr. Howard asked what would happen if property was sold and the new owners shifted the grid.

Mr. Pelletier state the structures could change easily and therefore should not be used to set the grid the grid should be fixed according to the land.

Mr. Smith noted that it would seem the work group should meet to address the issues and return at the next meeting during which the Commission could vote on whether to accept the proposal to accept or reject the proposal. He stated that the assistance Legislative Services in drafting the language would be appreciated.

Rep. Currier asked Mr. Snelling to explain the list he had generating the Commission's priorities.

Mr. Snelling had requested that Commission members rank the issues on the list relative to importance. He had listed 17 issues. He only received responses from 10 of the 24 commission members. Some members grouped issues together and some added issues he had not listed. He tried to organize the responses as best he could and establish a ranking system. Developing a permit process, the woodland buffer, education and outreach, impermeable surface limits and the 50 ft setback ranked high in all responses. Three members added enforcement, appeals processes, and permits. Mr. Snelling felt these last 3 items should be grouped together and noted that Ms. Patterson had been working on permitting issues with another workgroup.

Ms. Balcius stated that she was involved in that work group and they needed a little more time to finish up.

Mr. Snelling asked if they were addressing whether the town or state would have primary jurisdiction.

Ms. Balcius said that issue was being addressed.

Mr. Snelling asked if it was something the Commission could discuss at the next meeting.

Ms. Balcius believed it would be possible. Ms. Balcius suggested that if they were going to limit house sizes then perhaps they should consider exceptions if there were drainage improvements made.

Mr. Snelling asked if there was another committee reviewing towns that have grandfathered setbacks and the issue of water dependent structures.

Rep. Currier suggested that legislation should be introduced in segments so that if a problem with one aspect of the changes arose it would not hold up all of the recommended changes.

Minutes

Mr. Schloss noted that the meeting had gotten off track and asked if the Commission could return to the priorities list.

Ms. Nelson asked how the Commission should proceed with the issues and cited the permit process as an example.

Rep. Currier stated that the decision tree/ permitting work group was looking at the issue and considering factors such as Article 28-a and would report to the Commission.

Ms. Nelson stated that she thought the work group was only working on the existing processes.

Ms. Balcius stated that the work group was trying to identify whether or not a new process was needed by looking at the existing processes and determining where there were holes in those processes. Most issues are covered by existing processes and adding a new permit process might create new issues and overwhelm the system.

Mr. Currier stated that he did not believe that the programs overseeing the existing processes were actively enforcing the CSPA.

Mr. Pelletier stated that programs such as Subsurface were looking at CSPA issues.

Mr. Landers pointed out that a house could be renovated without needing Subsurface approval in which case the Department would not be able to review the project.

Mr. Howard noted that in his observation the new permit in Moultonborough was serving as a conduit for education and established baseline information for enforcement.

Ms. Balcius stated that the work group was looking for the most effective and efficient method to achieve their goals.

Mr. Herr stated that no matter which way the Commission went the resulting process(es) will be complex and wanted to know who homeowners could call for assistance.

Mr. Schloss stated that they needed something to provide focus for contractors and homeowners.

Rep. Currier stated that the checklist may provide focus.

Ms. Nelson stated that it was her belief that a permit process was necessary.

Mr. Currier stated the he would email the Decision Tree work group with regard to presenting at the next meeting.

Next meet will be July 10, 2006

12:00 Meeting Closed